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**Court:** CO Adams County District Court 17th JD

**Judge:** Edward C Moss

**File & Serve**

**Transaction ID:** 21897267

**Current Date:** Oct 14, 2008

**Case Number:** 2007CV908

**Case Name:** ST OF COLO ATTORNEY GENERAL vs. GEMELLI, CHARLES J et al

**EFILED Document – District Court  
CO Adams County District Court 17th JD  
2007CV908**

**Filing Date: Oct 14 2008 3:38PM MDT**

**Transaction ID: 21962807**

/s/ Judge Edward C Moss



**GRANTED**

The moving party is hereby **ORDERED** to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

**Edward C. Moss**  
**District Court Judge**

DATE OF ORDER INDICATED ON ATTACHMENT

1100 Judicial Center Drive  
Brighton, Colorado 80601

STATE OF COLORADO, ex rel. JOHN W. SUTHERS,  
ATTORNEY GENERAL,

Plaintiff,

v.

K.M.R. HARTNACK, INC., D/B/A AMERICAN  
ENGINE INSTALLATIONS., a Texas Corporation,  
DISCOUNT ENGINE CENTERS, INC., a Colorado  
Corporation, also dba AMERICAN ENGINE  
INSTALLATIONS;  
JOHN K. HARTNACK,  
TIMOTHY M. GEMELLI, and  
CHARLES J. GEMELLI, Individually,

Defendants.

▲ **COURT USE ONLY** ▲

Case No.: 07CV908

Div. C      Ctrm:

**CONSENT JUDGMENT CONCERNING K.M.R. HARTNACK INC., D/B/A  
AMERICAN ENGINE INSTALLATIONS AND JOHN K. HARTNACK**

This matter is before the Court on the parties' Stipulation for Entry of a Consent Judgment. The Court has reviewed the Stipulation and the file and is otherwise advised in the grounds therefor. The Court concludes that good cause has been shown for entering this Consent Judgment.

Accordingly IT IS ORDERED that:

**GENERAL PROVISIONS**

1. Scope of Consent Judgment. The injunctive provisions of this Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, § § 6-1-101 *et. seq.*, C.R.S. (2007) ("CCPA") and the Motor Vehicle Repair Act, § § 42-9-101 *et. seq.*, C.R.S. (2007).

2. Release of Claims.

(a) The State acknowledges by its execution hereof that this Consent Judgment constitutes a complete settlement and release of all claims on behalf of the STATE OF COLORADO ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL (“STATE”) against Defendant JOHN K. HARTNACK (“HARTNACK”) in his individual capacity, and K.M.R. HARTNACK, INC. d/b/a AMERICAN ENGINE INSTALLATIONS, a Texas Corporation, (“AEI”) (hereinafter referred to collectively as the “DEFENDANTS” unless otherwise specified) with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted prior to this date under the above-cited consumer protection statutes and relating to or based upon the acts or practices which are the subject of the Amended Complaint filed in this action. The STATE agrees that it shall not proceed with or institute any civil action or proceeding based upon the above-cited consumer protection statutes against the DEFENDANTS, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys’ fees, or costs, for any communication disseminated prior to this date which relates to the subject matter of the Amended Complaint filed in this action or for any conduct or practice prior to the date of this Order which relates to the subject matter of the Amended Complaint filed in this action. Notwithstanding the foregoing, the STATE may institute an action or proceeding to enforce the terms and provisions of this Consent Judgment or to take action based on future conduct by the DEFENDANTS.

(b) DEFENDANTS are entering into this Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation. DEFENDANTS’ execution of this Consent Judgment is not and shall not be considered an admission by the DEFENDANTS.

(c) This release does not affect the STATE’s claims against the remaining three persons named in its suit: Discount Engine Centers, Inc. also d/b/a American Engine Installations, Timothy Gemelli, and Charles Gemelli.

3. Preservation of Law Enforcement Action. Nothing herein precludes the STATE from enforcing the provisions of this Consent Judgment, or from pursuing any law enforcement action with respect to the acts or practices of DEFENDANTS not covered by this lawsuit, Consent Judgment or any acts or practices of DEFENDANTS conducted after the Effective Date of this Consent Judgment.

4. Compliance with and Application of State Law. Nothing herein relieves DEFENDANTS of their duty to comply with applicable laws of the STATE nor constitutes authorization by the STATE for DEFENDANTS to engage in acts and practices prohibited by such laws. This Consent Judgment shall be governed by the laws of the State of Colorado.

5. Non-Approval of Conduct. Nothing herein constitutes approval by the STATE of DEFENDANTS' past business practices. DEFENDANTS shall not make any representation contrary to this paragraph.

6. Personal Liability. Defendant HARTNACK expressly denies any wrongdoing on his part. The STATE agrees that there is no finding herein of personal liability alleged by the STATE in its Amended Complaint or stated below. Execution of this Consent Judgment by Defendant HARTNACK is not and shall not be considered an admission by Defendant HARTNACK. However, to ensure payment set forth by this agreement, Defendant HARTNACK agrees to personally guarantee through his assets held by him and in trust DEFENDANTS' compliance with the monetary payments agreed to and ordered by this Consent Judgment.

7. Preservation of Private Claims and Relation to Private Settlements. Unless otherwise noted, nothing herein shall be construed as waiver of any private rights, causes of action, or remedies of any person against DEFENDANTS with respect to the acts and practices covered by this Consent Judgment. This Consent Judgment, however, specifically provides for execution of a written release by restitution recipients as a condition precedent to receipt of restitution, in accordance with Paragraph 21, below.

8. Use of Settlement as Defense. DEFENDANTS acknowledge that it is the STATE's customary position that an agreement restraining certain conduct on the part of a defendant does not prevent the STATE from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the STATE's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the STATE from taking enforcement action to address conduct occurring after the entry of this Consent Judgment that the STATE believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Consent Judgment shall not be a defense to any such enforcement action.

9. Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Consent Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

10. Public Record. Pursuant to § 6-1-112(2), C.R.S. (2007), this Consent Judgment shall be a matter of public record.

11. Contempt. The parties understand and agree that any violation of any term of this Consent Judgment shall give rise to the contempt remedies and penalties provided under § 6-1-112(2), C.R.S. (2007).

12. Execution in Counterparts. This Consent Judgment may be executed in counterparts.

### **FACTUAL ALLEGATIONS**

13. The STATE alleges in its Amended Complaint that DEFENDANTS and the Gemellis and Discount Engine Centers, which at relevant times operated AEI corporate and franchised shops in Colorado, violated the CCPA through their deceptive advertising and sales of installed remanufactured and pre-owned engines. Currently Defendant AEI has no corporate shops, affiliates or franchises in Colorado.

14. The STATE alleges in its Amended Complaint that after obtaining the year, make, and model of consumers' cars, Defendant AEI sales representatives would provide consumers with an estimate for a remanufactured or used engine installation, which DEFENDANTS, the Gemellis and Discount Engine Centers knew or should have known was substantially less than the final cost charged to consumers in order to receive a complete engine repair with AEI's advertised warranty. The STATE alleges that the final cost for engine installation was on average over fifty percent higher than the initial estimate given by the DEFENDANTS, the Gemellis and Discount Engine Centers. The STATE alleges that the DEFENDANTS, the Gemellis and Discount Engine Centers were aware that the initial estimates were unrealistic to yield a profit, but failed to inform consumers prior to dismantling their engines that the final cost would be substantially higher than the initial estimate. The STATE alleges that consumers complained directly to DEFENDANTS, the Gemellis and Discount Engine Centers regarding the disparity between the initial estimate and final cost.

15. The STATE alleges in its Amended Complaint that DEFENDANTS, the Gemellis and Discount Engine Centers misled consumers regarding the estimated repair time. Consumers complained of engine installations taking two or three times longer than estimated without being notified ahead of time.

16. The STATE further alleges in its Amended Complaint that DEFENDANTS, the Gemellis and Discount Engine Centers wrongly advertised their use of ASE-certified mechanics and Better Business Bureau ("BBB") membership. ASE is an acronym for "Automotive Service Excellence." The STATE alleges that consumers were misled by such advertising and wrongly believed that an ASE-certified mechanic at AEI would conduct the repairs on their vehicles, when in reality the Commerce City and Colorado Springs AEI shops employed one ASE certified mechanic, in total, from 2004 to 2007. DEFENDANTS were provided sufficient information to know that an ASE-certified mechanic was not on staff at each of the Colorado AEI shops. The STATE further alleges that within print advertisements and within AEI's website, DEFENDANTS, the Gemellis and Discount Engine Centers claimed that AEI shops were members of the BBB. Although the AEI Dallas headquarters maintained BBB membership in Texas, neither of the two Colorado shops was ever a BBB member.

17. The DEFENDANTS expressly deny the allegations in the Amended Complaint and state that they have decided to settle the matter to avoid the protracted costs of litigation.

### **PERMANENT INJUNCTION**

DEFENDANTS shall be enjoined from:

18. Participating in the operation of any engine repair business, in whole or in part, in Colorado or that affects Colorado consumers. This includes any and all of DEFENDANTS' affiliates and franchised businesses that provide engine repair to consumers in whole or in part, in Colorado or that affect Colorado consumers.

### **MONETARY PROVISIONS**

19. Defendant K.M.R. HARTNACK INC., d/b/a AMERICAN ENGINE INSTALLATIONS agrees to pay to the Colorado Department of Law, and Defendant JOHN K. HARTNACK agrees to personally guarantee such payment, in the amount of three hundred thousand dollars (\$300,000.00), which shall be paid to the Attorney General to be held along with any interest thereon in trust to be used first for consumer restitution to be distributed as described below; second, to reimburse the state for its reasonable costs and attorneys fees; and third, for future consumer education, consumer fraud and antitrust enforcement efforts. § 6-1-110, C.R.S. (2007).

20. Of the agreed-upon total of \$300,000.00, one hundred and fifty thousand dollars (\$150,000.00) will be payable within five business days after entry of this Consent Judgment. The remaining one hundred and fifty thousand dollars (\$150,000.00) will be payable within sixteen (16) months after entry of this Consent Judgment. Specifically, Defendant AEI agrees to make installment payments of ten thousand dollars (\$10,000.00) to the Colorado Department of Law every thirty (30) days after entry of this Consent Judgment and every thirty (30) days following, until it has paid the second \$150,000.00. Such payments shall be paid by certified funds and directed to the **State of Colorado Department of Law** and include a reference of "American Engine Installations." Deliver payments to: 1525 Sherman Street, 7<sup>th</sup> Floor, Denver, CO 80203, Attention Olivia DeBlasio.

20. Failure to pay in full and on time as per the monetary terms of this Consent Judgment will constitute contempt of this Court. In the event of such non-payment, DEFENDANTS agree to pay the costs of any legal action instituted to carry out successful recovery of the agreed amounts, pursuant to § 6-1-113, C.R.S. (2007).

21. The Colorado Attorney General shall pay pro rata restitution in a manner that he, in his sole discretion, deems appropriate. The Colorado Attorney General may give preference to those consumers who have (to the point of excluding those consumers who have not) filed written complaints received by the Attorney General's Office on or before the date of this Order. Any and all recipients of restitution pursuant to this Consent

Judgment shall sign a release of their claims against DEFENDANTS. The parties to this Consent Judgment shall negotiate the terms of such a release.

22. DEFENDANTS acknowledge that they have thoroughly reviewed this Consent Judgment with their attorneys, that they understand and agree to its terms, and that they agree that it shall be entered as the Order of this Court.

SO ORDERED and SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2008.

BY THE COURT:

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Honorable Edward C. Moss  
Adams County District Court Judge

This Consent Judgment Concerning K.M.R. Hartnack, Inc. d/b/a American Engine Installations and John K. Hartnack, signed and agreed to this 8<sup>th</sup> day of October, 2008.

\_\_\_\_\_  
JOHN K. HARTNACK, President of  
K.M.R. HARTNACK, INC. d/b/a  
AMERICAN ENGINE INSTALLATIONS

\_\_\_\_\_  
JOHN K. HARTNACK, Individually

In all respects, on behalf of the Plaintiff the  
State of Colorado, *ex rel.*  
JOHN W. SUTHERS, Attorney General

As to form, on behalf of the Defendants



\_\_\_\_\_  
JAY B. SIMONSON, 24077\*  
First Assistant Attorney General  
Consumer Fraud Unit  
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OLIVIA C. DEBLASIO, 35867\*  
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\_\_\_\_\_  
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Holland & Hart, LLP  
555 Seventeenth Street  
Suite 3200  
Denver, CO 80202

Attorneys for Defendant

Signed and agreed to this 2 day of oct, 2008.

  
\_\_\_\_\_  
JOHN K. HARTNACK, President of  
K.M.R. HARTNACK, INC. d/b/a  
AMERICAN ENGINE INSTALLATIONS

  
\_\_\_\_\_  
JOHN K. HARTNACK, Individually

In all respects, on behalf of the Plaintiff the  
State of Colorado, *ex rel.*  
JOHN W. SUTHERS, Attorney General

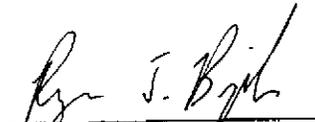
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